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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SHARON BARNUM and ROBERT SUSTRIK,
and all similarly situated individuals,

Plaintiffs,

vs.

EQUIFAX INFORMATION SERVICES, LLC,

Defendant.

Case No.: 2:16-cv-02866-RFB-NJK

**DEFENDANT'S MOTION FOR LEAVE
TO FILE SUR-REPLY IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Defendant Equifax Information Services, LLC ("Equifax") respectfully requests leave to file a sur-reply to respond to issues raised for the first time in Plaintiffs' Reply in Support of Motion for Partial Summary Judgment (Dkt. No. 187) (the "Reply Brief"). Defendant states as follows:

1. Plaintiffs filed this putative class action on December 11, 2016.
2. On August 6, 2018, Plaintiffs filed a Motion for Partial Summary Judgment. *See* Dkt. No. 154.
3. Equifax filed a brief opposing the Partial Motion for Summary Judgment on September 18, 2018. *See* Dkt. No. 173. Equifax argued, among other things, that Plaintiffs'

1 Motion should be denied because Plaintiffs cited no evidence that Equifax “failed to provide” re-
2 investigation results to Plaintiffs. *Id.* at 7.

3 4. On October 29, 2018, Plaintiffs filed the Reply Brief. *See* Dkt. No. 187.

4 5. In their Reply Brief, Plaintiffs inaccurately argue that Equifax misled Plaintiffs
5 into believing that the number of reinvestigation results “generated” during a particular time
6 period was tantamount to the number of results “sent.” *See* Reply Brief at 5. That argument was
7 not previously raised, and in any event, is contradicted by the record. This amounts to nothing
8 more than a blatant attempt to improperly color the Court’s perception of Equifax’s statements
9 while the Court considers the several pending motions before it.

10 6. Courts in this district and districts within the Ninth Circuit grant sur-replies where
11 a party makes misstatements on reply. *See Ioane v. Comm’r*, Case No. 3:09-CV-00243, 2010
12 WL 2600689, at *1 (D. Nev. Mar. 11, 2010) (granting defendant’s motion for leave to file sur-
13 reply to address plaintiff’s alleged misstatements of law and fact); *Banga v. Experian Info. Sols.*,
14 Inc., No. C 09-04867 SBA, 2013 WL 5539690, at *3 (N.D. Cal. Sept. 30, 2013) (granting
15 plaintiff’s motion for leave to file sur-reply in order to, among other things, respond to “several
16 misstatements and distortions in the factual record.”). In this instance, the Court should provide
17 Equifax with an opportunity to respond. Plaintiffs should not be permitted to deprive Equifax of
18 the chance to address issues by failing to timely raise them.

19 WHEREFORE, Equifax respectfully requests that the Court disregard Plaintiffs’ new
20 arguments raised in the Reply Brief, or alternatively, grant Equifax leave to file a sur-reply to
21 Plaintiffs’ Reply Brief and further grant such other relief as is appropriate under the
22 circumstances. Defendants’ proposed sur-reply brief is attached as Exhibit A for the Court’s
23 review.

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Respectfully submitted this 14th day of November, 2018.

/s/ Bradley Austin

Bradley T. Austin (Nev. Bar No. 13064)

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Equifax Information Services, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served the 14th day of November, 2018, via ECF, upon:

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/s/ Lyndsey Luxford

An employee of Snell & Wilmer, L.L.P.

INDEX OF EXHIBITS

Ex. No.	Description	No. of Pages
A	Sur-Reply in Opposition to Plaintiffs' Motion for Partial Summary Judgment	5

4843-6006-4891